



FILED

Feb 24 2009, 8:55 am

Kevin L. Smith

CLERK

of the supreme court,
court of appeals and
tax court

ATTORNEY FOR APPELLEE:

KARA A. HANCUFF
Monroe County Department of
Child Services
Bloomington, Indiana

JOHN WHITE,)
)
Appellant-Respondent,)
)
vs.) No. 53A01-0807-JV-328
)
MONROE COUNTY DEPARTMENT)
OF CHILD SERVICES,)
)
Appellee-Petitioner.)

February 24, 2009

DARDEN, Judge

STATEMENT OF THE CASE

John White (“Father”) appeals the trial court’s determination that his son, J.W., is a child in need of services (“CHINS”).

We affirm.

ISSUE

Father raises two issues, one of which we find dispositive:

Whether there is sufficient evidence to support the trial court’s adjudication of J.W. as a CHINS.¹

FACTS

J.W. was born to Melissa Abram (“Mother”) and Father on August 2, 2002. On or about August 29, 2007, the Monroe County Department of Child Services (the “DCS”) received a report that Mother had hit J.W., causing a bruise to his eye. The DCS later confirmed the report. At the time, J.W. lived with Mother. According to the DCS, “there was an identified need for [Father] to receive services” before J.W. could be placed with him. (Tr. 15).

Accordingly, on September 5, 2007, Father and Mother agreed to a program of informal adjustment (“IA”) with the DCS. Among other things, Father and Mother agreed that they would “not use physical abuse on [J.W.]”; “cooperate with all home-based family services and mental health services provided by Family Solutions and/or the Center for Behavioral Health” (“CBH”); “follow all recommendations made by a service

¹ Father also asserts that “any reports or witnesses at the dispositional hearing” should not be considered at the appellate level in determining whether there was sufficient evidence to support the trial court’s determination that J.W. is a CHINS. We need not address this issue, however, as we find sufficient evidence was presented at the fact-finding hearing to support the trial court’s determination.

provider and/or the [DCS]”; submit to drug tests; and “obtain a substance abuse assessment and/or mental health assessment at CBH and follow all recommendations made by the assessment before October 30, 2007.” (App. 8). The trial court approved the program for a period of six months.

On or about November 19, 2007, the trial court issued an order granting Father temporary custody of J.W. In December of 2007, Father was evicted from his home. He and J.W. then moved in with Father’s mother, Sharon White (“Grandmother”). Grandmother, however, evicted Father in January of 2008 after Father was discovered drinking in her home.

On February 7, 2008, the DCS filed a petition, alleging J.W. to be a CHINS. The next day, the DCS filed an amended petition, alleging the following:

[Mother] and [Father] have each been in non-compliance with services since signing the IA. The IA stipulates that [Father] and [Mother] will obtain mental health and substance abuse assessments at CBH and will follow recommended treatment, and that this will have been done by 10/30/20 [sic]. [Mother] has participated sporadically with services at CBH and is currently in non-compliance with services. [Mother] is to visit with [J.W.] three times per week, but often cancels. [J.W.]’s visits with [M]other are inconsistent and chaotic; he exhibits highly escalated, anxious, and violent behavior during these visits and there are major concerns regarding child and parent safety. Visitation with [M]other is not ordered to be supervised, though DCS and service providers try to provide supervision in order to ensure safety for [J.W.]

Service providers and DCS have frequently observed [Father] drinking in the presence of [J.W.]. [Father] states that he drinks approximately a fifth of alcohol daily, yet he has not gone to CBH for a substance abuse assessment. [Father] had had unresolved warrants and legal issues, and has had one arrest during this IA. [Father] has recently been evicted from his home and has unstable employment. [Father]’s current instability makes [J.W.]’s placement with [F]ather unstable and tenuous.

At the time of eviction on 01/18/2008, [J.W.] had been staying with his paternal grandmother, Sharon White, for approximately two weeks. According to [Father], this was due to him not having gas money to transport [J.W.] to school. Upon eviction, [Father] decided that he and [J.W.] would stay with [Grandmother] until stable housing was secured. [Father] is not allowed to drink at [Grandmother]'s residence, and leaves the home to stay elsewhere when he drinks. [Grandmother] is providing stability and consistency for [J.W.] at this time, though there are concerns regarding both parents' unpredictable and erratic behaviors.

(App. 14). The petition recommended that J.W. "remain in the home of his father as an in-home CHINS." *Id.* The trial court held an initial hearing and appointed a court-appointed special advocate ("CASA").

On May 19, 2008, the DCS filed a second amended petition, alleging that "[s]ince the filing of this original petition [Father] has left [Grandmother's] home and has had little contact with his son. Additionally, [Mother] is now incarcerated." *Id.* at 17. The DCS recommended that J.W. "remain in the home of his grandmother as CHINS." *Id.*

The trial court held a fact-finding hearing on May 19, 2008, during which Mother admitted J.W. to be a CHINS. Nicole Berlin, the family's case manager, testified that Father had not obtained a substance abuse assessment. She further testified that she had observed Father drinking in J.W.'s presence. Father had informed her that "he drinks about a fifth a day and that he's fine doing that." (Tr. 12). She testified that Grandmother evicted Father from her residence and that Father "calls [J.W.] sporadically[.]" *Id.* She further testified that Father had not been in physical contact with J.W. "[f]or the past several months" and "hasn't provided housing . . . , food, clothing, shelter" *Id.* Furthermore, Father had not been involved with services or contacted DCS regarding J.W.

Grandmother testified that she and her husband had told Father he was not allowed to drink in their home. After her husband discovered Father drinking in the home, he was told to leave. Grandmother also testified that Father had J.W. for several days during J.W.'s spring break.

Regarding services, Father testified that he "went to the evaluation, but [he] never started the actual classes" or obtained treatment. *Id.* at 38. Father further testified that he was in custody due to failure to pay child support for J.W. Father also testified that he left J.W. with Grandmother because he could not support him. As of the date of the hearing, Father had not obtained employment and remained incarcerated.

On May 22, 2008, the trial court entered its order, finding as follows:

1. [J.W.] is the five-year old son of [Mother] and [Father].
2. . . . [Father] signed an Informal Adjustment Agreement with the [DCS]. Pursuant to the agreement, [Father] was to obtain a substance abuse evaluation (and/or a mental health evaluation) at the [CBH]. He was to follow all treatment recommendations. He did obtain the assessment, but failed to follow the recommendations for treatment. He admits that he failed to comply with the terms and conditions of the Informal Adjustment Agreement.
3. [Grandmother] reports that [Father] has an alcohol problem. [Father] reports that he drinks a "fifth" each day. When [J.W.] was in his custody, he often drank in front of [J.W.]. This was distressing to [J.W.]. [J.W.] is currently in therapy.
4. [Father] is currently incarcerated on non-support charges. He cannot currently care for [J.W.]
5. [Father] asserts that he . . . has not failed to provide necessary food, clothing, medical care, education, or supervision for [J.W.] because he placed [J.W.] in [Grandmother]'s care shortly after he obtained custody. He maintains that, in placing [J.W.] with [Grandmother], he was acting as a responsible parent. However, the evidence establishes that [Father] has

abdicated all responsibility for [J.W.]’s care. Originally, both [Father] and [J.W.] were living in [Grandmother]’s home. [Grandmother] does not allow [Father] to drink in her home. When he violated this restriction, she forced him to leave. [Grandmother] kept [J.W.] in her care. The evidence supports a finding that [Father] did not voluntarily leave [J.W.] with [Grandmother]. Rather, [Grandmother] took responsibility for [J.W.] after she forced [Father] to leave. [Father]’s abandonment of [J.W.] is not the act of a responsible parent.

(App. 20). The trial court then concluded that “[J.W.] is a [CHINS] based on [Father]’s failure to provide the child with necessary food, clothing, medical care, education, and supervision.” *Id.* at 21. Accordingly, the trial court scheduled a dispositional hearing.

On May 23, 2008, the CASA submitted his dispositional report, recommending that J.W. be adjudicated a CHINS and remain in Grandmother’s care. The DCS also submitted its predispositional report, recommending, among other things, that [J.W.] “remain a CHINS and in his current placement.” *Id.* at 31.

On June 23, 2008, the trial court held a dispositional hearing. The trial court admitted into evidence the DCS’s report over Father’s objection. It then admitted the CASA’s report into evidence without objection after amending it by interlineation. The trial court heard testimony that Grandmother had been diagnosed with pneumonia; therefore, J.W. had been residing with Father’s sister.

The trial court’s order provided as follows:

1. That the reports filed by the [DCS] and the [CASA] are admitted into evidence.
2. That the Court adopts the findings and recommendations of the [DCS] and the CASA, contained in their Reports. . . . These findings and recommendations are incorporated herein, and made a part of the Court’s Order.

3. That [the DCS] has made reasonable efforts to deliver preventive services to the child and parents respectively in accordance with the statute and that those services were ineffective in preventing the removal of the child. It is in the best interests of the child that the child be placed outside the home. Placement in the home is contrary to the welfare of the child.

(App. 33).

DECISION

Father asserts that there is insufficient evidence to support the trial court's CHINS determination.

Indiana Code section 31-34-1-1- provides:

1. A child is a child in need of services if before the child becomes eighteen (18) years of age:

(1) the child's physical or mental condition is seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of the child's parent, guardian, or custodian to supply the child with necessary food, clothing, shelter, medical care, education, or supervision; and

(2) the child needs care, treatment, or rehabilitation that:

(A) the child is not receiving; and

(B) is unlikely to be provided or accepted without the coercive intervention of the court.

The DCS has the burden of proving by a preponderance of the evidence that a child is in need of services. *In re T.S.*, 881 N.E.2d 1110, 1112 (Ind. Ct. App. 2008). When we review the trial court's CHINS determination, we consider only the evidence most favorable to the judgment and the reasonable inferences therefrom. *Id.* We will neither reweigh the evidence nor reassess the credibility of the witnesses. *Id.*

When a court's orders contain specific findings of fact and conclusions of law, we engage in a two-tiered review. First, we determine whether the evidence supports the findings. Then, we determine whether the findings support the judgment. We only reverse the trial court's judgment if it is clearly erroneous. A judgment is clearly erroneous if it is unsupported by

the findings and conclusions. Findings of fact are “clearly erroneous when there is no substantial evidence of probative value to support the findings.” When deciding whether the findings are clearly erroneous, we consider only the evidence and reasonable inferences therefrom that support the judgment. We cannot reassess the credibility of the witnesses or reweigh the evidence.

In re A.H., 751 N.E.2d 690, 694-95 (Ind. Ct. App. 2001), *trans. denied*.

Father argues that the evidence does not support the trial court’s findings. Specifically, he argues that the evidence does not support the finding that “he often drank in front of [J.W.],” that this “was distressing to [J.W.],” or that “[J.W.] is currently in therapy.” (App. 20). He also contests the finding that he abdicated all responsibility for J.W.

Here, Berlin testified that Father admitted to drinking up to a fifth of alcohol per day and that she had observed Father drinking in J.W.’s presence. She also testified that Father had not complied with CBH’s recommendations or otherwise sought treatment for his drinking. The trial court heard testimony that while Father had custody of J.W., he had been evicted twice—the second time for drinking. Father admitted that he had not sought treatment for his drinking or complied with the IA. No one, however, testified that Father’s drinking caused J.W. distress or that J.W. was in therapy.

Father acknowledged that, when he left Grandmother’s home, he did not “set up any formal arrangement for her to have legal guardianship over [J.W].” (Tr. 38). He also testified that he could not provide J.W. with a stable home environment.

The record shows that Father abuses alcohol; has not sought treatment; did not abide by the IA; abdicated his responsibility for J.W. by failing to parent him; failed to

secure and maintain adequate housing and employment; and did not establish a legal guardian for J.W. Given the evidence, we cannot say that the trial court's findings are clearly erroneous.

Having determined that the evidence supports the findings, we next consider Father's argument that the findings do not support the trial court's conclusion that "[J.W.] is a Child in Need of services based on [Father]'s failure to provide the child with necessary food, clothing, medical care, education, and supervision." (App. 21). Father argues that the trial court's conclusion was erroneous as Grandmother had been caring for J.W.

We cannot say that the trial court clearly erred when it concluded that Father's failure to provide J.W. with "necessary food, clothing, medical care, education, and supervision" supports its CHINS determination. Father admitted to drinking heavily; refused to seek treatment for his alcohol abuse; was incarcerated; was unemployed; and failed to maintain suitable housing due to being evicted twice within a two-month period. We also find Father's assertion that his leaving J.W. with Grandmother absolves him is unpersuasive. *See In re K.S.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001) (finding that the law provides for the termination of parental rights "when the parents are unable or unwilling to meet their parental responsibilities").

Affirmed.

RILEY, J., and VAIDIK, J., concur.